

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>THERESA DIX</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,004,760
<b>TWIN OAKS HEALTH CENTER</b>	)	
Respondent	)	
AND	)	
	)	
<b>CNA/CNA PLUS</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent and its insurance carrier appealed the August 8, 2003 preliminary hearing Order for Medical Treatment (Order) entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

This is a claim for a January 11, 2002 accident. On that date claimant contends that she injured her left shoulder and neck when she assisted a coworker in lifting and carrying a patient of respondent's nursing home. Respondent and its insurance carrier acknowledge that claimant injured her left shoulder in the accident but contest that claimant injured her neck or cervical spine.

In the August 8, 2003 Order, Judge Avery found that claimant aggravated a preexisting condition in her cervical spine. Consequently, the Judge granted claimant's request for medical treatment for her neck.

Respondent and its insurance carrier contend Judge Avery erred. They argue that claimant has failed to prove that the January 2002 accident injured claimant's neck as claimant's medical records allegedly do not mention neck symptoms until October 23, 2002. Consequently, they argue that claimant's testimony of ongoing neck pain following the January 2002 accident is contradicted by her medical records. Additionally, they argue that the most persuasive evidence regarding claimant's neck condition comes from Dr. Phillip L. Baker, who concluded that claimant did not injure her neck in the January 2002

accident. Accordingly, respondent and its insurance carrier request the Board to deny claimant's request for medical benefits for her neck.

Conversely, claimant requests the Board to affirm the August 8, 2003 Order. Claimant counters that she complained of neck pain on March 22, 2002, when she first saw Dr. Jeffrey C. Randall. Claimant also contends that she complained that her neck was hurting whenever she went to any of her doctors for this injury. According to claimant, any failure of an authorized treating physician to record and pursue claimant's neck complaints says more about how the physicians selected by respondent narrowly interpreted their authorization to treat claimant than it reflects upon claimant's credibility.

The only issue before the Board on this appeal is whether claimant injured her neck or cervical spine in the January 11, 2002 lifting incident.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and the parties' arguments, the Board concludes that the August 8, 2003 preliminary hearing Order should be affirmed.

On January 11, 2002, claimant injured herself while helping lift and carry one of respondent's nursing home patients. According to claimant, after that incident she experienced pain in her left shoulder, neck and down into her left hand. In early April 2002, Dr. Jeffrey C. Randall operated on claimant's left shoulder. But the shoulder surgery did not resolve claimant's neck and left arm pain. Dr. R. Lance Snyder now recommends an anterior cervical discectomy fusion and plating between the fifth and sixth cervical vertebrae.

Judge Avery determined claimant aggravated her neck in the January 2002 accident. The Board finds no reason to disturb that finding. The Board concludes that claimant's testimony is credible that she experienced neck pain immediately following the January 2002 accident. Contrary to respondent and its insurance carrier's contention, claimant complained to Dr. Randall as early as March 2002 that she was having neck pain. The doctor's handwritten March 22, 2002 medical notes read, in part:

3-22-02 – check L shoulder – W/C 1/11/02 lifting at work

Pt. was lifting a pt. at a nursing home and felt a "pull" L shoulder. Painful L shoulder and up L side of neck. Painful ROM "especially backwards."

The Board finds that it is more probably true than not that claimant injured her neck as a result of the January 2002 accident. That accidental injury arose out of and in the

course of employment with respondent. Accordingly, claimant is entitled to medical benefits for her neck injury.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.<sup>1</sup>

**WHEREFORE**, the Board affirms the August 8, 2003 preliminary hearing Order entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

c: Timothy A. Short, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>1</sup> K.S.A. 44-534a.